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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

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MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE JOINT APPLICATION
OF BLACK MOUNTAIN GAS COMPANY AND
SEMSTREAM ARIZONA PROPANE, L.L.C. FOR
APPROVAL OF THE TRANSFER OF THE
BLACK MOUNTAIN PAGE DIVISION AND
RELATED ASSETS TO SEMSTREAM ARIZONA
PROPANE, L.L.C.

DOCKET NO. G-03703A-06-0694
DOCKET NO. G-20471A-06-0694

DECISION NO. 69579OPINION AND ORDER

DATE OF HEARING: March 26, 2007

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Teena Wolfe

APPEARANCES: Jeremy A. Lite, QUARLES & BRADY STREICH
LANG LLP, on behalf of Applicant SemStream Arizona
Propane, L.L.C.;

Keith A. Brown and Karen S. Haller, Southwest Gas
Corporation, on behalf of Applicant Black Mountain
Gas Company; and

Charles Hains, Staff Attorney, Legal Division, on behalf
of the Utilities Division Staff of the Arizona Corporation
Commission.

BY THE COMMISSION:

On October 30, 2006, Black Mountain Gas Company ("BMG") and SemStream Arizona Propane, L.L.C. (SemStream") (collectively, "Applicants") jointly filed with the Arizona Corporation Commission ("Commission") an application for approval of the transfer and sale of BMG's non-excluded regulated assets and property utilized in BMG's Page Division to SemStream and to transfer BMG'S Page Division Certificate of Convenience and Necessity ("CC&N") to SemStream.

On December 11, 2006, the Commission's Utilities Division Staff ("Staff") informed Applicants that the application met the sufficiency requirements under the Commission's rules.

On January 22, 2007, a Procedural Order was issued setting a hearing on the application and

1 setting associated procedural deadlines, including publication of notice of the application and
2 hearing.

3 On February 8, 2007, SemStream filed direct testimony in support of the application.

4 On February 12, 2007, Southwest Gas Corporation, on behalf of BMG, filed Certification of
5 Publication and Mailing in accordance with the requirements of the January 22, 2007 Procedural
6 Order. No requests for intervention were filed.

7 On March 5, 2007, Staff filed a Staff Report on the application, recommending approval
8 subject to several conditions.

9 On March 16, 2007, SemStream and BMG filed a Joint Response to the Staff Report.

10 The hearing was held as scheduled on March 26, 2007, before a duly authorized
11 Administrative Law Judge of the Commission. No members of the public appeared. Applicants and
12 Staff appeared through counsel. SemStream and Staff presented evidence. The matter was then
13 taken under advisement pending the submission of a Recommended Opinion and Order to the
14 Commission.

15 * * * * *

16 Having considered the entire record herein and being fully advised in the premises, the
17 Commission finds, concludes, and orders that:

18 **FINDINGS OF FACT**

19 1. BMG is a wholly owned subsidiary of Southwest Gas Corporation ("Southwest Gas").
20 The transfer of BMG's Page Division CC&N and assets to Southwest Gas was approved by
21 Commission Decision No. 66101 (July 25, 2003). BMG's regulated propane distribution systems are
22 located within the City of Page, Arizona, where it serves approximately 1,400 customers, and within
23 the nearby Greenhaven development, where BMG's Page Division serves approximately 130
24 customers. BMG has approximately 49 miles of distribution pipeline located within the City of Page;
25 approximately 2,000 customer service lines in the City of Page; one 18,000-gallon above-ground
26 storage tank in the Greenhaven development; approximately 12 miles of distribution pipeline in the
27 Greenhaven development; and approximately 160 customer service lines in the Greenhaven
28 development.

1 2. SemStream is a Delaware limited liability company that has been authorized to
2 transact business in Arizona since August 7, 2006. SemStream is a wholly-owned subsidiary of
3 SemStream L.P., which is in turn a subsidiary of SemGroup L.P. of Tulsa, Oklahoma.

4 3. On September 20, 2006, BMG entered into an agreement with SemStream for the
5 purchase and sale of BMG's non-excluded regulated assets and property utilized in BMG's Page
6 Division to SemStream L.P., SemStream's parent. On October 26, 2006, SemStream L.P. assigned
7 its rights under the agreement to SemStream.

8 4. On October 30, 2006, BMG and SemStream jointly filed with the Commission an
9 application for approval of the transfer and sale of BMG's non-excluded regulated assets and
10 property utilized in BMG's Page Division to SemStream and to transfer BMG'S Page Division
11 CC&N to SemStream.

12 5. SemStream's witness testified that the assets of its parent company SemStream L.P.,
13 and the management and staff that support those assets, would be available to SemStream after the
14 close of the proposed transaction. SemStream L.P. is one of the largest private propane terminal
15 operators in the industry and is engaged nationally in natural gas liquids supply, marketing, propane
16 terminal operations and risk management services. SemStream L.P. owns and operates 10 private
17 propane terminals with a combined throughput in excess of 300 million gallons per year and owns
18 and leases in excess of 10 million gallons of physical storage. SemStream L.P. also has access to
19 over 42 million gallons of leased storage capacity at various locations in the United States and
20 Canada, and in 2005 transported 6.8 million gallons of natural gas liquids per day, 42 percent of
21 which was propane. SemStream's witness testified that BMG's Page Division customers can expect
22 to benefit from increased supply security as a result of SemStream's access to its parent's storage and
23 distribution resources.

24 6. SemStream's witness testified that it plans to maintain a local presence, including the
25 offices where BMG's Page Division employees work today. SemStream intends to retain all of
26 BMG's Page Division current five employees, and to hire new employees to fill two vacant positions,
27 such that it will retain all seven BMG Page Division employee positions.

28 7. We find that SemStream has access to the resources necessary to operate the BMG

1 Page Division system and to supply safe, adequate and reliable service to BMG's Page Division
2 customers, and that it will have access to adequate financial resources to operate BMG's propane
3 distribution system in Arizona.

4 8. The Staff Report recommended approval of the proposed sale and transfer subject to
5 the following conditions:

- 6 1) That SemStream retains the tariff, rates and charges approved by the Commission
7 for the Page Division in Decision No. 66101 (July 25, 2003), pending conclusion of
8 a future rate case.
- 9 2) That SemStream retains the Page Division's Purchased Gas Adjuster ("PGA")
10 surcharge of \$0.2562 per therm, as approved in Decision No. 68816 (June 29,
11 2006), pending any change by the Commission in a future PGA surcharge
12 proceeding.
- 13 3) That SemStream maintains a separate accounting record for its operation of the Page
14 Division and retains a copy of the related books and records in Arizona.
- 15 4) That SemStream and its parents make available to Staff their books and records,
16 upon request during a rate case or other proceedings.
- 17 5) That SemStream shall not seek regulatory recovery of any costs arising from this
18 transaction in a future rate proceeding;
- 19 6) That the Commission deny SemStream recovery of any acquisition adjustment
20 resulting from this transaction.
- 21 7) That if the Commission decides to defer consideration of regulatory recovery of
22 acquisition costs and acquisition adjustment in a future proceeding, that SemStream
23 be required to "demonstrate that clear, quantifiable and substantial net benefits to
24 ratepayers have resulted from the acquisition of the Page Division's systems that
25 would not have been realized had the transaction not occurred, before the
26 Commission would consider recovery of any acquisition adjustment in a future rate
27 proceeding."
- 28 8) That Southwest Gas assumes full responsibility for any gain or loss arising from the
sale of its Page Division and transfer of the related CC&N.
- 9) That SemStream assumes responsibility for the balance of the Page Division's
prepayments, customer deposits and the refundable portion of advances in aid of
construction ("AIAC"), at the close of the transaction.
- 10) That SemStream maintains an adequate level of staffing in Arizona, including
qualified technical personnel, sufficient to avoid degradation of service to its
customers.

- 11) That SemStream complies with all Commission rules, orders and other requirements relevant to the provision of service in Arizona.
- 12) That SemStream timely files financial and other reports required by the Commission in the proper format.
- 13) That SemStream Arizona adds an additional page to its monthly PGA report, listing any propane purchases made during that month from any affiliate. Also, Staff recommends that as part of SemStream's monthly PGA report, filed in April each year, that it provide a summary of the previous calendar year's propane purchases from any affiliate, as well as noting any other affiliate transactions related to its acquisition of propane supplies.
- 14) That SemStream maintains all procedures and records needed to show compliance with all pipeline safety regulations at the Page office.
- 15) That SemStream upgrades the existing manuals to more correctly reflect the Page Division's operations, within 30 days after completion of the sale.
- 16) That BMG or Southwest Gas corrects all non-compliance items noted during the 2007 code compliance audit before completion of the sale.
- 17) That within 90 days of approval of the application, SemStream files a report in this docket providing a detailed explanation of how propane supplies will be purchased for the Page Division and how such purchases will be coordinated and allocated between the Page and Payson service areas.

Staff Proposed Condition Nos. 1-4, 8-14, and 16-17

9. Applicants had no objection to Staff's proposed Condition Nos. 1-4, 8-14, and 16-17. We find these conditions reasonable and will adopt them.

Staff Proposed Condition No. 15

10. SemStream requested that this condition be amended to allow it six months following completion of the sale to upgrade existing manuals. Staff did not object to this request. The condition with the modification requested by SemStream is reasonable and will be adopted.

Staff Proposed Condition Nos. 5-7: Acquisition Adjustment

11. The September 20, 2006 agreement between BMG and SemStream, L.P. provides for a purchase price of \$1.8 million, to be adjusted by the Page Division's working capital at the close of the transaction. As of December 31, 2006, the Page Division had a net book value of approximately \$2.103 million. Staff states that based on the tentative figures, it appears that the sale of the Page

1 Division may result in a loss. Staff recommends, however, that as a condition of approval of the
2 application, Applicants' shareholders be held responsible for the net impact of the transaction, and
3 Arizona ratepayers be held harmless (Staff Report at 3).

4 12. Staff's proposed Condition No. 5 would preclude SemStream from seeking regulatory
5 recovery in a future rate proceeding of any costs that might arise from the proposed sale and transfer,
6 including recovery of any acquisition adjustment, as a condition of approval of the application, and
7 Staff's proposed Condition No. 6 would deny SemStream recovery of any acquisition adjustment
8 resulting from the proposed sale and transfer. Staff's witness testified that its proposed Condition
9 Nos. 5 and 6 would better protect ratepayers than its alternative proposed Condition No. 7.
10 Applicants object to Staff's proposed Condition Nos. 5 and 6, and request that the Commission
11 instead adopt Staff's proposed Condition No. 7. SemStream argues that a condition automatically
12 prohibiting future cost recovery would not be in the public interest if it might act to discourage
13 transactions that could produce net consumer benefits, or if it counteracts the incentive for regulated
14 companies to strive toward peak efficiency and denies an acquiring utility the opportunity to establish
15 and demonstrate operational and administrative efficiencies and consumer benefits in a future rate
16 proceeding. In support of its position, SemStream cites our determination in Decision No. 66101,
17 concerning the acquisition of BMG's Page Division by Southwest Gas. In Decision No. 66101, we
18 stated that the applicant would bear the burden in a future proceeding of proving clear and
19 quantifiable savings for all ratepayers directly related to the acquisition and the new owner's
20 management/operation of the system (Decision No. 66101 at 14).

21 13. The facts before us in this case are different than the facts that were before us in
22 Decision No. 66101 and in Decision No. 69394. In those cases, the evidence suggested that the buyer
23 was overpaying the seller for the plant. Here, the evidence suggests that the buyer is underpaying the
24 seller for the plant. (Staff Report at 3.) Accordingly, SemStream's argument – that a condition
25 automatically prohibiting an acquisition adjustment might discourage efficiency-enhancing
26 transactions – holds less sway. SemStream does not need additional incentive to enter into the
27 transaction if it is already purchasing BMG's Page Division for less than its value. Accordingly, we
28 agree with Staff that its proposed Condition Nos. 5 and 6 will better protect ratepayers than its

1 alternative proposed Condition No. 7.

2 14. Moreover, we wish to reiterate our general rule: the Commission does not permit
3 recovery of an acquisition adjustment arising from a sale of assets barring *extraordinary*
4 circumstances. There has been no demonstration of extraordinary circumstances in this case, only a
5 vague assertion that the transaction *might* result in operational efficiencies. We recognize that a flat
6 prohibition on acquisition adjustments might discourage efficiency-enhancing transactions.
7 However, given the forward-looking nature of this concern, it is appropriate to require parties seeking
8 an acquisition adjustment to justify their request *ex ante* as well as *ex post*. In other words, if a party
9 believes that an acquisition adjustment is necessary to bring about an efficiency-enhancing
10 transaction, it should come to the Commission and establish at the very least: (1) the transaction will
11 not likely occur but for an acquisition adjustment, (2) that operational efficiencies will likely result
12 from the transaction, and (3) in a subsequent rate case, that operational efficiencies resulted from the
13 transaction. Having failed, in this case, to make the first two showings, Applicants have forfeited the
14 right to make the third showing.

15 15. The following conditions on approval of the application are reasonable to protect the
16 public interest:

- 17 1) SemStream shall retain and charge the tariff, rates and charges approved by the
18 Commission for the Page Division in Decision No. 66101 (July 25, 2003), pending
19 conclusion of a future rate case.
- 20 2) SemStream shall retain the Page Division's PGA surcharge of \$0.2562 per therm, as
21 approved in Decision No. 68816 (June 29, 2006), pending any change by the
22 Commission in a future PGA surcharge proceeding.
- 23 3) SemStream shall maintain a separate accounting record for its operation of the Page
24 Division and shall retain a copy of the related books and records in Arizona.
- 25 4) SemStream and its parents shall make available to Staff their books and records,
26 upon request during rate case or other proceedings.
- 27 5) SemStream shall not seek regulatory recovery of any costs arising from this
28 transaction in a future rate proceeding.
- 6) The Commission shall deny SemStream recovery of any acquisition adjustment
resulting from this transaction.

- 1 7) SemStream shall assume responsibility for the balance of the Page Division's
2 prepayments, customer deposits and the refundable portion of AIAC at the close of
3 the transaction.
- 4 8) SemStream shall maintain an adequate level of staffing in Arizona, including
5 qualified technical personnel, sufficient to avoid degradation of service to its
6 customers.
- 7 9) SemStream shall comply with all Commission rules, orders and other requirements
8 relevant to the provision of service in Arizona.
- 9 10) SemStream shall timely file financial and other reports required by the Commission
10 in the proper format.
- 11 11) SemStream shall add an additional page to its monthly PGA report, listing any
12 propane purchases made during that month from any affiliate. As part of
13 SemStream's monthly PGA report, filed in April each year, SemStream shall
14 provide a summary of the previous calendar year's propane purchases from any
15 affiliate, as well as noting any other affiliate transactions related to its acquisition of
16 propane supplies.
- 17 12) SemStream shall maintain all procedures and records needed to show compliance
18 with all pipeline safety regulations at the Page office.
- 19 13) SemStream shall upgrade the existing manuals to more correctly reflect the Page
20 Division's operations, within six months of the sale.
- 21 14) SemStream shall file in this docket, within 90 days of this Decision, a report
22 providing a detailed explanation of how propane supplies will be purchased for the
23 Page Division and how such purchases will be coordinated and allocated between
24 SemStream's Page and Payson service areas.

25 16. It is reasonable, to protect the public interest, to require that BMG or Southwest Gas
26 correct all non-compliance items noted during the 2007 code compliance audit before completion of
27 the sale, as a condition of approval of the application.

28 17. It is reasonable, to protect the public interest, to require Southwest Gas to assume full
responsibility for any gain or loss arising from the sale of its Page Division assets in Arizona as well
as the transfer of the related CC&N, as a condition of approval of the application.

18. SemStream should be required to provide notice to all customers of BMG's Page
Division, in a form and manner acceptable to the Commission's Utilities Division Staff, that the
Commission has approved the transfer and sale and that SemStream will charge the same rates and

1 charges currently in effect for the customers of BMG's Page Division. The notice should include
2 customer contact information for SemStream.

3 CONCLUSIONS OF LAW

4 1. BMG and Southwest Gas are public service corporations within the meaning of
5 Article XV of the Arizona Constitution and A.R.S. §§ 40-282 and 40-285.

6 2. The Commission has jurisdiction over BMG, SemStream, and Southwest Gas, and of
7 the subject matter of the application.

8 3. Notice of the application was given in accordance with the law.

9 4. There is a continuing need for underground propane gas utility service in BMG's Page
10 Division certificated area.

11 5. In the context of a proposed transfer of assets and Certificate of Convenience and
12 Necessity, the Commission should examine all evidence available to it to determine whether or not
13 the transfer is detrimental to the public interest.

14 6. The Commission has the authority to impose conditions on a Certificate of
15 Convenience and Necessity that are required by the public convenience and necessity.

16 7. SemStream is a fit and proper entity to acquire and operate the assets of BMG's Page
17 Division and provide propane gas distribution service to BMG's Page Division customers, and to
18 receive a Certificate of Convenience and Necessity authorizing it to provide that service.

19 8. As conditioned herein, SemStream's acquisition of BMG's Page Division assets and
20 the transfer of BMG's Page Division Certificate of Convenience and Necessity to SemStream is in
21 the public interest and should be approved.

22 9. The conditions set forth in Findings of Fact Nos. 15-17 are reasonably necessary to
23 prevent harm to the public interest and should be adopted.

24 ORDER

25 IT IS THEREFORE ORDERED that the joint application of Black Mountain Gas Company
26 and SemStream Arizona Propane, L.L.C. for approval of the transfer and sale of Black Mountain Gas
27 Company's non-excluded regulated assets and property utilized in Black Mountain Gas Company's
28 Page Division to SemStream Arizona Propane, L.L.C. and to transfer Black Mountain Gas

Company's Page Division Certificate of Convenience and Necessity to SemStream Arizona Propane, L.L.C. is hereby granted, subject to the conditions set forth in Findings of Fact Nos. 15, 16 and 17.

IT IS FURTHER ORDERED that SemStream Arizona Propane, L.L.C. shall comply with each of the conditions set forth in Findings of Fact No. 15.

IT IS FURTHER ORDERED that SemStream Arizona Propane, L.L.C. shall provide notice to all customers of Black Mountain Gas Company's Page Division, in a form and manner acceptable to the Commission's Utilities Division Staff, that the Commission has approved the transfer and sale, and that SemStream Arizona Propane, L.L.C. will charge the same rates and charges currently in effect for the customers of Black Mountain Gas Company's Page Division. The notice shall include customer contact information for SemStream Arizona Propane, L.L.C.

IT IS FURTHER ORDERED that, as a condition of approval of the application, Southwest Gas Corporation shall assume full responsibility for any gain or loss arising from the sale of its Page Division assets in Arizona as well as the transfer of the related Certificate of Convenience and Necessity.

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IT IS FURTHER ORDERED that as a condition of approval of the application, Black Mountain Gas Company or Southwest Gas Corporation shall correct all non-compliance items noted during the 2007 code compliance audit before completion of the sale.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

 CHAIRMAN	 COMMISSIONER
 COMMISSIONER	 COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 21st day of May, 2007.


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
TW:db

1 SERVICE LIST FOR:

BLACK MOUNTAIN GAS COMPANY AND
SEMSTREAM ARIZONA PROPANE, L.L.C

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G-03703A-06-0694 et al.

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